S.L. 5 PAGE 18 79-1794

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SUPREME COURT, U.S.

UNITED STATES OF AMERICA

IN THE SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

GEORGE SUMMERS,

Respondent.

MICHIGAN SUPREME COURT NO. 58465

MICHIGAN COURT OF APPEALS NO. 22802

DETROIT RECORDER'S COURT NO. 74-07993

MOTION TO PROCEED IN FORMA PAUPERIS

NOW COMES the Respondent, GEORGE SUMMERS, by and through his attorney, GERALD M. LORENCE, and prays this Honorable Court that pursuant to Rule 53 (1) of the Rules of the Supreme Court of the United States, that the Respondent be allowed to proceed in forma pauperis before this Court for the reasons stated in the attached Affidavit.

GERALD M. LORENCE (P 16801)
Attorney for Respondent
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(313)961-9055

Dated: June 26, 1980

LAW OFFICES
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DETROIT, MICHIGAN 48226
961-9055 (313)

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1979

No. _____

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner

vs.

GEORGE SUMMERS,

Respondent

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, GEORGE SUMMERS, being first duly sworn according to law, depose and say, in support of my Motion For Leave To Proceed without being required to pre-pay costs or fees:

1. I am the Respondent in the above entitled cause.
2. Because of my poverty, I am unable to pay the cost of said cause.
3. I am unable to give security for the same.
4. I believe that I am entitled to the redress I seek in said cause.
5. The nature of said cause is briefly stated as follows:

After an illegal search, I was arrested and charged with possession of heroin. I filed a Motion to Suppress the Evidence and Quash the Information which was granted by

the trial court below. Petitioner appealed to both the Michigan Court of Appeals and the Michigan Supreme Court. Both courts affirmed the trial judge's decision. The People of the State of Michigan now seek certiorari in this Court on the ground that the Michigan Supreme Court's decision was based on an improper interpretation of the Federal Constitution.

GEORGE SUMMERS

Subscribed and sworn to before me this day of , 1980.

MARY ELIZABETH OWIESNY, Notary Public, Macomb County, acting in Wayne County, Michigan.

MY COMMISSION EXPIRES: 8-30-81

79-1794

S.L 5 PAGE 18 No. _____

Supreme Court, U. S.
FILED
JUL 1 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1979

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner

vs.

GEORGE SUMMERS,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF MICHIGAN

RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1979

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner

vs.

GEORGE SUMMERS,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF MICHIGAN

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, GEORGE SUMMERS, respectfully requests this Honorable Court to deny the Petition For Writ Of Certiorari, seeking review of the Michigan Supreme Court's opinion in this case.

That opinion is reported at 407 Mich. 432, _____ NW 2d _____ (12/27/79).

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QUESTIONS PRESENTED

I

WHETHER THE DECISION OF THE MICHIGAN SUPREME COURT IS BASED UPON A CORRECT INTERPRETATION OF RECENT DECISIONS OF THE UNITED STATES SUPREME COURT.

II

WHETHER A PREMISES SEARCH WARRANT MAY BE EXPANDED TO JUSTIFY A SEARCH OF INDIVIDUALS NOT THEREIN NAMED OR DESCRIBED ABSENT CONDUCT WHICH DIRECTS SUSPICION TO THAT INDIVIDUAL.

III

WHETHER THE APPLICATION OF THE EXCLUSIONARY RULE IS PROPER IN THE CASE AT BAR.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

Defendant-Appellee, GEORGE SUMMERS, was charged with possession of certain heroin taken from his person, under a warrant to search premises known as 9356 Mansfield, Detroit, Michigan, by Police Officer Anthony Conant, a member of the raiding party (T. 24). The warrant did not specify persons to be searched; it was based on an Affidavit by a Police Officer Roger Lehman, who participated in the raid. Officer Conant had "seen", but had not read the warrant (T. 32).

When the raiding party came to the home, Officer Lehman saw a person, later identified as Defendant, coming out of the front door. Defendant said he lived in the home (T. 5, 27). The officer instructed Defendant to open the door (T. 5). Defendant replied he had no keys (T. 5), but used an intercom; one Dwight Calhoun answered. The officer identified himself (T. 6) and forced the door open (T. 7). He instructed Officer Conant to bring Defendant Summers into the home (T.34).

The officers searched the house, which contained 5-8 persons, and found suspected heroin in the basement (T. 26, 27). They observed Mr. Calhoun drop a bag of suspected heroin from his person (T. 7,8). Mr. Summers was arrested (T. 8) when suspected heroin was discovered on his person by Officer Conant (T. 9) during a custodial search. It is this heroin that forms the basis for this charge.

Following a preliminary examination, the Defendant was bound over for trial. The trial court subsequently granted a Motion to Suppress and Quash the Information which was affirmed by the Michigan Court of Appeals, 68 Mich. App. 571, 243 N.W. 2d 689 (1976). The Michigan Supreme Court also affirmed, holding that the detention of Defendant while the search was conducted was without probable cause and, therefore, unconstitutional, based on Dunaway v New York, 442 US 200

(1979) and Ybarra v Illinois, 48 U.S.L.W. 4023 (1979). The heroin found in his jacket was thus properly suppressed, being the fruit of an illegal arrest.

REASONS FOR DENYING THE WRIT

I

THE DECISION OF THE MICHIGAN SUPREME COURT IS BASED UPON A CORRECT INTERPRETATION OF RECENT DECISIONS OF THE UNITED STATES SUPREME COURT.

The People would submit in their Petition that the case at bar should be a vehicle for the creation of a "General Recognition" (Petition at 8) of a right to briefly detain persons on premises by the police who have a warrant that does not name or authorize persons to be searched or seized.

Defendant submits that this question was fully considered by this Court in Ybarra v Illinois, 48 U.S.L.W. 4023 (1979), and was rejected; this Court holding that a warrant to search a place cannot normally be construed to authorize a search of each person in that place.

The distinction between "private" and "public" places which the People seek to introduce (Petition at 8) is also not tenable; Fourth Amendment rights inure to persons, not places, Ybarra, supra; Katz v United States, 389 U.S. 347 (1967). Further, such a position flies in the historical basis of the Amendment, which was to accord protection to citizens in their homes from the unwarranted intrusion by the agents of the king.

II

THE ISSUE OF THE APPLICABILITY OF A PREMISES SEARCH WARRANT TO JUSTIFY SEARCH OF INDIVIDUALS NOT THEREIN NAMED OR DESCRIBED HAS BEEN DECIDED BY THIS COURT, AND A WARRANT CANNOT BE EXPANDED AS PROFERRED BY THE PEOPLE TO JUSTIFY A SEARCH OF AN INDIVIDUAL ABSENT CONDUCT WHICH DIRECTS SUSPICION TO THAT INDIVIDUAL.

This Courts' decision in Ybarra v Illinois, supra disposes of the second alleged basis for granting Certiorari in this case. In Ybarra, police obtained a search warrant for a bar and an named person. They entered the bar, Ybarra (not the person named in the warrant) was a customer. The officers know nothing about him, and he exhibited no behavior which would lead them to believe he was armed or would pose a threat. A "pat down" revealed a cigarette package containing heroin.

This Court held that a premises search warrant does not, without more, extend to persons not named therein found on the premises. This Court also continued the tradition of regognizing that Fourth Amendment rights are personal, and police conduct must be evaluated on an individual level, Katz v United States, supra.

The case at bar must be evaluated on this basis. Defendant is observed by officers coming out of the house. He has no bag, briefcase or other container likely to contain contraband. He is not a person named or described in the warrant. He cooperates with the officers, who have no reason to believe he is armed or a threat, or is committing a felony.

At this point in time, the officers had no right to arrest Defendant, or to conduct a "pat down". He should have been allowed to go. Yet, without authority from the warrant, or their observation, he is detained.

It is directly from this unlawful detention that the subsequent intrusion of the person of Defendant is based. The warrant-based permises search finds heroin. Defendant is then searched and heroin is found on his person. This heroin froms the basis of a criminal charge against Defendant.

However, but for the unlawful detention of Defendant, he would not have been on the premises when the heroin was

found[1], and the police would not have been in a position to invade his person.

The case at bar presents a classical application of the "fruit of the poisonous tree" doctrine, barring the use of evidence obtained in direct violation of Fourth Amendment restraints, Silverthorne Lumber Co. v United States, 251 U.S. 385 (1920); Wong Sun v United States, 371 U.S. 471 (1936).

The case was correctly analyzed and decided by the State Courts and certiorari is not warranted.

III

THERE BEING NO BASIS FOR THE SEIZURE OF THE EVIDENCE OTHER THAN THE UNLAWFUL CONDUCT OF THE POLICE, THE EVIDENCE MUST BE SUPPRESSED AS "THE FRUIT OF THE POISONOUS TREE".

It is an accepted principle of constitutional law that evidence, directly or indirectly the product of a violation of the Fourth Amendment is excluded at trial, Wong Sun v United States, supra; Silverthorne Lumber Co. v United States, supra.

In the case at bar, the accused was in police custody and subject to search only as a result of his illegal detention outside the dwelling and then being forced to re-enter and remain there during the search. Therefore, the material seized from Defendant is proffered by the People as a direct violation of criminal law.

This Court has not failed to apply the exclusionary rule to those police practices or alleged basis of authority which

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[1]It should be carefully pointed out that the association of Defendant with the premises might justify the issuance of a warrant for his arrest, which arrest might include a search of his person and the area under his immediate control, C.F. Chimel v California, 395 U.S. 752, (1969). That issue is not before the Court, given the facts of the case, but is noted to refute any implication that, except by police conduct of the type here described, Defendant could not be brought before the Bar of Justice.

purport to authorize searches without probable cause, see authorities cited in Ybarra, supra at 4026 n. 11, distinguishing cases where the underlying offense, as opposed to the basis of the search, is found unconstitutional. The People make no compelling showing to justify departure from the "long prevailing constitutional standard" representing "'the best compromise that has been found for accommodating the often opposing interests' in 'safeguard[ing] citizens from rash and unreasonable interferences with privacy' and in 'seek[ing] to give fair leeway for enforcing the law in the community's protection.'" Ybarra v Illinois, supra at 4026, quoting Brinegar v United States, 338 U.S. 160 (1949). See authorities in Ybarra, supra at 4026, n. 10.

CONCLUSION

It is respectfully submitted that for the reasons outlined above, the Petition for Certiorari should be denied.

Respectfully submitted,

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